

Claims 1 to 3, and 5 are rejected as being obvious over the first cited reference, U.S. Patent No. 6,468,551, "the '551 reference." The '551 reference teaches microemulsion gels that have an oily phase essentially composed of low volatile constituents, an aqueous phase, and emulsifiers that are not ethylene or propylene oxide based and the droplets of the oily phase are joined by a crosslinking substance, as taught at column 7, line 50 to column 8, line 10. As taught further, at column 8, line 41 to 12, the '551 compositions include microemulsions without a crosslinker component used as precursors for the gels obtained with the crosslinker; but that can also be the '551 gels. The '551 gels use emulsifiers that are free from ethylene oxide and propylene oxide in any amount, and if desired, an additional emulsifier of one or more W/O emulsifiers. The total content of emulsifiers is 0.1 to 20% by weight of the microemulsion as taught at column 24, lines 56 to 59. The amount of 0.01 to 15% emulsifiers designated in the '551 reference are not O/W emulsifiers as indicated in error by the Examiner in the present office action at page 2. Rather, this amount refers to W/O emulsifiers, if desired, in an amount of 0.01 to 15% as disclosed at column 24, lines 62 to 64, column 7, line 66, and column 8, line 21 to 22. Further, at column 25, line 65 to column 26, line 7, the '551 reference teaches that the amounts of the emulsifiers are obtained because it is possible for thickeners to be used in the '551 compositions. Thus, the '551 reference suggests that the amount of the emulsifier can be reduced because thickeners can provide the structuring for the '551 gel. It can be clearly seen that the '551 reference fails to teach or suggest self-structuring nanogels like that of the present invention. The '551 microemulsions because they contain thickeners in place of emulsifiers are not self-structuring. Therefore, the '551 reference fails to render the present invention obvious, and therefore, a *prima facie* case of obviousness has not been made.

Second, the Examiner rejects Claim 6 as being obvious in view of a combination of the '551 reference and U.S. Patent No. 4,026,818 issued to Claudelli (hereinafter referred to as the '818 reference.) To establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant. *In re Kotzab*, 55 USPQ2d 1313, 1316 (CAFC 2000); see *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998); *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). The combination of references cited by the Examiner fails to teach or suggest a self-structuring oil phase and silicone component like that of the nanogels of the present invention. This is a claim limitation in the present invention, and therefore, Claim 6 of the present invention is not rendered obvious by this combination of references.

It is the Examiner's contention in the present office action that the combination of the '551 reference with the '818 reference would have been obvious because one of ordinary skill in the art would expect to successfully produce an improved gel by adding the silicone oil as suggested in the '551

reference to the '818 ringing gels. However, like the '551 reference, the '818 reference fails to teach or suggest a self-structuring nanogel. The '818 reference teaches the use of a coupler as taught at column 1, lines 61 to 63, in addition to the Kritchevsky type base and isostearic acid used to thicken the ringing gel. Thus, the '818 reference fails to remedy the defect of the '551 reference because it similar to the '551 reference teaches the use of thickener to make a ringing gel. Not only does it use a thickener, but it uses a coupler, and therefore, the '818 compositions in combination with the '551 compositions is not a teaching or suggest of self-structuring nanogels of the present invention.

Further, the Examiner notes that "[l]owering the concentration of emulsifier is suggested by the '818 reference. However, the '818 reference more specifically suggests at column 1, lines 49 to 50, to "lower ratios of emulsifier to oil." The ratio of surfactant to mineral oil in the '818 reference is noted at column 3, lines 2 to 5, and lines 17 to 20 as 1:1. Furthermore, the '818 reference mentions at column 1, lines 40 to 42, a high ratio of emulsifier to oil is noted as being 3:1. This actually teaches away from the present invention since it is the inverse a high ratio of emulsifier to oil, namely, a high ratio of oil to emulsifier of about 5:1 as explained at page 8, paragraph [00022]. Oil is at least five times as great as the emulsifier in the present invention. Therefore, the '818 reference fails to teach or suggest the present invention alone or in combination with the '551 reference.

Another reference, Kakoki et al. (U.S. Pat. No. 5,162,377; hereinafter "the '377 reference") is cited by the Examiner in combination with the '818 and the '551 references for rendering Claims 7 to 11, 13, 15, and 16 obvious (the third set of cited references). According to the Examiner, the '377 reference teaches the process of making a transparent emulsion cosmetic composition by applying a high-shearing treatment to the composition. However, Applicants note that the '377 reference fails to teach or suggest a self-structuring nanogel of the present invention. The '377 reference teaches a composition containing an amphiphilic substance and a surfactant, both of which thicken the '377 compositions by providing structure. Specifically, the '377 reference teaches polyoxyethylene type surfactants, therefore, one of ordinary skill in the art would not be motivated to combine the '377 reference with the '551 reference which calls for its compositions to be free of ethylene oxide based emulsifiers. Further, the '377 reference fails to remedy the defect of the other cited references in that there is no teaching or suggestion of a self-structuring nanogel with a silicone oil component. Further still, the shearing process of the '377 reference is taught to be conducted at least 5 to 10 times to obtain the '377 compositions. There is a two step shearing process described in Claim 7 and a three step shearing process in Claim 8 of the present invention. Therefore, the two and three steps that are minimally used with the compositions of the present invention are not taught by the '377 reference, and therefore, this reference alone and in combination with the other cited references fails to teach or suggest the present invention.


The present invention relates to ringed nanogel composition that comprises an oil phase and a silicone oil component that self-structures when treated to a high shear/pressure treatment. The self-structuring thickens the composition and makes a nanogel. Because none the cited references alone nor in combination would lead one of ordinary skill in the art to the self-structuring compositions of the present invention a *prima facie* case of obviousness has not been established. For the reasons stated above, Applicants request that the Examiner's rejection be withdrawn as Claims 1 to 3, 5 to 11, 13, 15, and 16 of the present application, as amended, satisfy the requirements of 35 U.S.C. §103(a).

CONCLUSION

In view of the arguments presented above in the present submission, the claims are believed to be in condition for allowance, and issuance of a Notice of Allowance is respectfully solicited.

Respectfully submitted,

Date: February 5, 2004


Dorene M. Price (Reg. No. 43,018)
Estee Lauder Companies
125 Pinelawn Road
Melville, NY 11747
(631) 531-1194